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MAY 22 2009

OFFICE OF PETITIONS

In re Application of
Jean-Paul Accarie et al.
Application No. 10/724,701
Filed: December 2, 2003
Attorney Docket Number: 02997.002501

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: DECISION GRANTING PETITION
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This is a decision on the petition to withdraw the holding of abandonment, filed May 5, 2009, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

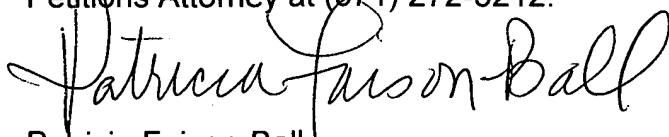
This application became abandoned for failure to timely respond to an Final Office Action mailed April 30, 2008 which set a three month period for response. No response having been filed or extension of time requested, this application became abandoned July 31, 2008. Accordingly, a Notice of Abandonment was mailed December 22, 2008.

The file record discloses that the Office Action was mailed April 30, 2008 to the address of record, the same address to which the Notice of Abandonment was mailed and received. However, petitioner contends that the Office Action was not received and that the Office Action was returned to the USPTO. Petitioner has also submitted copies of their docket to substantiate their claim.

A review of the USPTO files reveal that the Office Action was in fact returned to the USPTO by the United States Postal Service on May 1, 2008 and no apparent reason can be determined since it appears that the address of record was placed on the correspondence. In view of the facts set forth in the petition, it is concluded that the Office Action was never received.

Since the response to the Office Action has been provided with the instant petition, this matter is being referred to Technology Center 2445 for consideration and treatment of the amendment filed May 5, 2009.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions